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7
8 BEFORE THE
BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation) NO. AC-97-22
Against:)
12) DEFAULT DECISION AND
ROBERT C. MAST) ORDER OF THE BOARD
13 1050 Charter Street)
Redwood City, CA 94063) [Gov. Code §11520]
14)
Certified Public Accountant)
15 Certificate No. CPA 45251)
Respondent.)
16

17
18 STATUTES

19 1. California Government Code section 11506 provides,
20 in pertinent part:

21 "(c) The respondent shall be entitled to a hearing on
22 the merits if the respondent files a notice of defense,
and any such notice shall be deemed a specific denial
23 of all parts of the accusation not expressly admitted.
Failure to file a notice of defense shall constitute a
24 waiver of respondent's right to a hearing, but the
agency in its discretion may nevertheless grant a
25 hearing. Unless objection is taken as provided in
paragraph (3) of subdivision (a), all objections to the
26 form of the accusation shall be deemed waived."

27 2. California Government Code section 11520 provides,

1 in pertinent part:

2 "(a) If the respondent fails to file a notice of
3 defense or to appear at the hearing, the agency may
4 take action based upon the respondent's express
admissions or upon other evidence and affidavits may be
used as evidence without any notice to respondent; ..."

5 3. The Board of Accountancy, Department of Consumer
6 Affairs, ("Board") is authorized to revoke respondent's Certified
7 Public Accountant Certificate pursuant to California Business and
8 Professions Code section 5100 ("Code"), which, at all times
9 material herein, has provided in pertinent part that "the Board
10 may revoke, suspend or refuse to renew any permit or certificate"
11 issued by the Board for unprofessional conduct, including but not
12 limited to:

13 (a) a conviction which is substantially related to the
14 qualifications, functions, and duties of a CPA;

15 (f) willful violation of the Accountancy Act or any
16 Board rule or regulation;

17 (h) fiscal dishonesty or breach of fiduciary
18 responsibility of any kind.

19 4. Code section 5050 provides in pertinent part that
20 "(n)o person shall engage in the practice of public accountancy
21 in this State unless such person is the holder of a valid permit
22 to practice public accountancy..." and the practice of public
23 accountancy is defined in Code section 5051. Further, Code
24 section 5055 prohibits a person from assuming or using the title
25 "certified public accountant" or the abbreviation "CPA" unless
26 that person has received from the Board a certified public
27 accountant certificate and holds a valid permit to practice under

1 the provisions of Chapter 1, Division 3, of the Code.

2 5. The Board's regulations, codified in Title 16 of
3 the California Code of Regulations^{1/}, require, in section 87,
4 completion of at least 80 hours of qualifying continuing
5 education during every two-year period immediately preceding
6 permit renewal. Board Rule 80 provides that a licensee may apply
7 to have his/her license placed in an inactive status. During
8 such a time as the license is inactive, the licensee shall not
9 engage in the practice of public accountancy, and the continuing
10 education requirements are not applicable.

11 6. Code section 5107 provides, in part, that the
12 Board may request the administrative law judge, as part of the
13 proposed decision in a disciplinary proceeding, to direct any
14 holder of a permit or certificate found in violation of Code
15 section 5100(a), (b), (c), (h), (i) or (j), to pay to the Board
16 all reasonable costs of investigation and prosecution of the
17 case, including, but not limited to, attorney's fees. A
18 certified copy of the actual costs, or a good faith estimate of
19 costs signed by the Executive Officer, constitute prima facie
20 evidence of reasonable costs of investigation and prosecution of
21 the case.

22 7. Code section 118 provides, in pertinent part:

23 "(b) The suspension, expiration, or forfeiture by
24 operation of law of a license issued by a board in the
25 department, or its suspension, forfeiture, or
cancellation by order of the board or by order of a
court of law, or its surrender without the written

26
27 1. The Board's rules, codified at Title 16 of the California Code of Regulations in Sections 1-99, are hereinafter referred to as "Board Rule." Thus, section 87 is Board Rule 87.

1 consent of the board, shall not, during any period in
2 which it may be renewed, restored, reissued, or
3 reinstated, deprive the board of its authority to
4 institute or continue a disciplinary proceeding against
the licensee upon any ground provided by law or to
enter an order suspending or revoking the license or
otherwise taking disciplinary action against the
license on any such ground."

5 FINDINGS OF FACT

6 8. On May 2, 1986, the Board issued Certified Public
7 Accountant Certificate No. CPA 45251 to Robert C. Mast
8 ("Respondent). The certificate, which is subject to renewal
9 every two years pursuant to Code section 5070.6^{2/}, expired
10 October 1, 1995 because the renewal fee was not paid and the
11 declaration of compliance with continuing education requirements
12 was not submitted. On November 2, 1995, the licensee paid the
13 renewal fee and indicated that he was renewing the certificate
14 without continuing education, that is, in an "inactive status."
15 However, the delinquency fee was not paid^{3/} and the certificate
16 remained in an expired status until receipt of that fee,
17 effective April 26, 1996. The certificate was renewed in an
18 "inactive status" through September 30, 1997. The license has
19 not been renewed.

20 9. On or about August 8, 1997, Complainant Carol B.
21 Sigmann, in her official capacity as Executive Officer of the
22 Board, filed Accusation No. AC-97-22 against Respondent. A copy
23 of the Accusation is attached hereto as Exhibit A and
24

25 2. The applicable renewal period for this certificate is October 1 through September 30 of odd-
26 numbered years.

27 3. A delinquency fee is required pursuant to Code section 5070.6.

1 incorporated herein.

2 10. On or about August 13, 1997, Lyn A. Hunter, an
3 employee of the Office of the Attorney General, sent by certified
4 mail a copy of Accusation No. AC-97-22, Statement to Respondent,
5 Government Code sections 11507.5, 11507.6, and 11507.7, the
6 Notice of Defense form, and a Request for Discovery, to
7 Respondent's address of record with the Board which was and is
8 1050 Charter Street, Redwood City, CA 94063. On or about August
9 21, 1997, the signed green Domestic Return Receipt, indicating
10 delivery on August 19, 1997, was returned by the USPS to the
11 Office of the Attorney General. The above-described service was
12 effective as a matter of law pursuant to the provisions of
13 California Government Code section 11505(c).

14 11. Respondent failed to file a Notice of Defense
15 within 15 days after service upon him of the Accusation and
16 therefore waived his right to a hearing on the merits of
17 Accusation No. AC-97-22.

18 12. The actual and reasonable costs of the Board's
19 investigation and prosecution of this case are \$ 4,345.78.

20 13. Pursuant to its authority under Government Code
21 section 11520, and based on the evidence before it, the Board
22 finds that the following allegations contained in Accusation No.
23 AC-97-15 are true:

24 a. Respondent undertook to timely prepare tax returns
25 for a client, Vahideh Dowlathshahi, but failed to do so by the
26 October 15, 1994, due date, resulting in the client's incurring
27 \$1,369.13 in federal and state penalties and interest for late

1 filing. Respondent has not reimbursed the client.

2 b. Respondent, at times known to Respondent but
3 unknown to Complainant, practiced public accountancy when his
4 license was in an inactive status.

5 Findings in Aggravation of Penalty

6 14. Respondent failed to timely perform services,
7 resulting in penalties and other financial harm to his client.
8 Respondent has not made restitution to his client for the
9 penalties and interest she was required to pay because of his
10 misconduct.

11 DETERMINATION OF ISSUES

12 1. Service of the Accusation and the Notice of
13 Hearing were effective as a matter of law pursuant to the
14 provisions of California Government Code section 11505 and Code
15 section 124.

16 2. Respondent's certificate is subject to discipline
17 for unprofessional conduct in violation of Code section 5100(c),
18 in that his conduct is an extreme departure from the standard of
19 practice and constitutes gross negligence, by reason of the
20 Findings of Fact numbers 8 through 13.a. above, and cause for
21 revocation has been established based upon those findings of
22 fact.

23 3. Respondent's certificate is subject to discipline
24 for unprofessional conduct in violation of Code section 5100(h)
25 for the breach of his fiduciary responsibility to his client, by
26 reason of the Findings of Fact numbers 8 through 13.a. above, and
27 cause for revocation has been established based upon those

1 findings of fact.

2 4. Respondent's certificate is subject to discipline
3 for unprofessional conduct in violation of Code section 5050 in
4 conjunction with Code section 5100(f), by reason of the Findings
5 of Fact numbers 8 through 12 and 13.b. above in that he practiced
6 public accountancy when his license was in an inactive status.

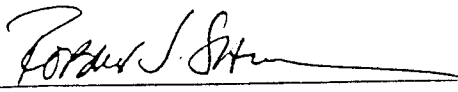
7 5. The Findings in Aggravation of Penalty in
8 paragraph 14 of the Findings of Fact provide further support for
9 the imposition of the penalty of revocation of licensure.

10 ORDER OF THE BOARD OF ACCOUNTANCY

11 Certified Public Accountant Certificate number CPA
12 45251, heretofore issued to Respondent Robert C. Mast, is hereby
13 revoked. An effective date of January 1, 1998, has been
14 assigned to this Order.

15 Pursuant to California Government Code section
16 11520(b), Respondent is entitled to make any showing by way of
17 mitigation; however, such showing must be made in writing to the
18 Board of Accountancy, 2000 Evergreen Street, Suite 250,
19 Sacramento, California 95815, prior to the effective date of this
20 decision.

21 Made this 2nd day of December, 1998.

22 
23 _____
24 President
25 Board of Accountancy
26 Department of Consumer Affairs

27 JCW:pam
CAJEANNEIMAST.DEF
(10/22/97)

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of the State of California
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11 In the Matter of the Accusation) NO. AC-97-22
Against:)
12) ACCUSATION
13)
ROBERT C. MAST)
1050 Charter Street)
13 Redwood City, CA 94063)
14)
Certified Public Accountant)
15 Certificate No. CPA 45251)
16 Respondent.)
_____)

17
18 Complainant Carol B. Sigmann, as cause for disciplinary
19 action, alleges:

20 1. Complainant is the Executive Officer of the
21 California Board of Accountancy ("Board") and makes and files
22 this accusation solely in her official capacity.

23 LICENSE INFORMATION

24 2. On or about May 2, 1986, Certified Public
25 Accountant Certificate No. CPA 45251 was issued by the Board to
26 Robert C. Mast ("Respondent"). The certificate, which is subject
27 to renewal every two years pursuant to Business and Professions

1 Code (hereinafter "Code") section 5070.6^{1/}, expired October 1,
2 1995 because the renewal fee was not paid and the declaration of
3 compliance with continuing education requirements was not
4 submitted. On November 2, 1995, the licensee paid the renewal
5 fee and indicated that he was renewing the certificate without
6 continuing education, that is, in an "inactive status." However,
7 the delinquency fee was not paid^{2/} and the certificate remained
8 in an expired status until receipt of that fee, effective April
9 26, 1996. The certificate is now renewed in an "inactive status"
10 through September 30, 1997.

11 STATUTES AND REGULATIONS

12 3. This accusation is brought under the authority of
13 Code section 5100 which provides that the Board may revoke,
14 suspend or refuse to renew any permit or certificate issued by
15 the Board, or may censure the holder of any such permit or
16 certificate for unprofessional conduct, including any of the
17 causes therein.

18 4. Code section 5100(c) at all relevant times
19 provided and now provides, in pertinent part, that a licensee's
20 certificate may be revoked for dishonesty, fraud, or gross
21 negligence in the practice of public accountancy.

22 5. Code section 5100(h) at all relevant times
23 provided and now provides that a licensee's certificate may be
24 revoked for fiscal dishonesty or breach of fiduciary
25

26 1. The applicable renewal period for this certificate is October 1 through September 30 of odd-numbered
27 years.

2. A delinquency fee is required pursuant to Code section 5070.6.

1 responsibility of any kind.

2 6. Code section 5050 provides in pertinent part that
3 "(n)o person shall engage in the practice of public accountancy
4 in this State unless such person is the holder of a valid permit
5 to practice public accountancy..." and the practice of public
6 accountancy is defined in Code section 5051. Further, Code
7 section 5055 prohibits a person from assuming or using the title
8 "certified public accountant" or the abbreviation "CPA" unless
9 that person has received from the Board a certified public
10 accountant certificate and holds a valid permit to practice under
11 the provisions of Chapter 1, Division 3, of the Code.

12 7. The Board's regulations, codified in Title 16 of
13 the California Code of Regulations^{3/}, require, in section 87,
14 completion of at least 80 hours of qualifying continuing
15 education during every two-year period immediately preceding
16 permit renewal. Board Rule 80 provides that a licensee may apply
17 to have his/her license placed in an inactive status. During
18 such a time as the license is inactive, the licensee shall not
19 engage in the practice of public accountancy, and the continuing
20 education requirements are not applicable.

21 8. Applicable standards pertinent to this accusation
22 include, without limitation:

23 a. Section 10.22 of Treasury Circular 230 which
24 requires that an individual practicing before the Internal
25 Revenue Service exercise "due diligence".

26
27 3. The Board's rules, codified at Title 16 of the California Code of Regulations in sections 1-99, are
hereinafter referred to as "Board Rule." Thus, section 89 is Board Rule 89.

1 b. Sections 6072 and 6081 of the Internal Revenue
2 Code which specifies due dates and extension periods for filing
3 tax returns.

4 9. Code section 5107 provides for recovery by the
5 Board of all reasonable costs of investigation and prosecution of
6 the case, including, but not limited to, attorney's fees in
7 specified disciplinary actions, including alleged violations of
8 Code sections 5100(c) and (h). A certified copy of the actual
9 costs, or a good faith estimate of costs signed by the Executive
10 Officer, constitute prima facie evidence of reasonable costs of
11 investigation and prosecution of the case.

12 FOR CAUSES FOR DISCIPLINE

13 10. Respondent is subject to disciplinary action
14 pursuant to Code section 5100 in that he undertook to timely
15 prepare tax returns for a client, Vahideh Dowlathshahi, but failed
16 to do so by the October 15, 1994, due date, resulting in the
17 client's incurring \$1,369.13 in federal and state penalties and
18 interest for late filing.

19 11. Incorporating by reference the matters alleged in
20 paragraph 10, Respondent is subject to discipline under Code
21 section 5100(c) for gross negligence in the practice of public
22 accountancy.

23 12. Incorporating by reference the matters alleged in
24 paragraph 10, Respondent is subject to discipline under Code
25 section 5100(h) for the breach of fiduciary responsibility toward
26 his client.

27 13. Respondent is subject to discipline under Code

1 section 5050 in conjunction with Code section 5100(f) in that, at
2 times known to Respondent but unknown to Complainant, he
3 practiced public accountancy when his license was in an inactive
4 status.

5 MATTERS IN AGGRAVATION

6 14. It is charged, in aggravation of penalty, that the
7 Respondent has failed to make restitution to his client
8 Dowlatshahi for the penalties and interest she was required to
9 pay because of his misconduct.

10 PRAYER

11 WHEREFORE, complainant requests that the Board hold a
12 hearing on the matters alleged herein, and that following said
13 hearing, the Board issue a decision:

- 14 1. Revoking or suspending Certified Public Accountant
15 Certificate Number CPA 45251, heretofore issued to
16 Respondent Robert C. Mast;
17 2. Ordering restitution pursuant to Government Code
18 section 811519(d), to Vahideh Dowlatshahi for the
19 penalties and interest she was required to pay as
20 a result of Respondent's conduct, as a condition
21 of probation in the event that probation is
22 ordered,
23 3. Awarding the Board costs as provided by statute;
24 and

25 ///

26 ///

27 ///

4. Taking such other and further action as the Board
deems proper.

DATED: 8-8-97

Mary G. Craker

Carol B. Sigmant
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant

C:\JEANNE\MAST.ACC

(6/24/97)